

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1247 of 1996

with

CIVIL REVISION APPLICATION No 1411 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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NAGINBHAI MOTIBHAI PATEL

Versus

PATEL HARIBHAI ALIAS MANIBHAI MOTIBHAI  
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Appearance:

1. Civil Revision Application No. 1247 of 1996  
MR HM PARIKH for Petitioner  
MR YATIN SONI for Respondent No. 1  
NOTICE SERVED for Respondent No. 2, 3, 4
2. Civil Revision ApplicationNo 1411 of 1996  
MR HM PARIKH for Petitioner  
MR YATIN SONI for Respondent No. 1  
NOTICE SERVED for Respondent No. 2, 3, 4  
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ORAL JUDGEMENT

1. Heard the learned counsel for the respective parties. These are revisions under section 115, CPC, at the instance of original defendant no.4 (the second revision being at the instance of the defendants). The short question raised in the present revision application is as to whether the trial court, after having passed the decree, has jurisdiction to permit an amendment in the consent terms on the basis of which the consent decree has been passed. Thus, ultimately the question would be as to whether the consent decree passed by the trial court could be amended as a consequence of an amendment in the consent terms which forms the root and basis of the consent decree. On the short question, as a result of the hearing and discussion, learned counsel for the respective parties have arrived at a consensus, on the basis of which this controversy is no longer raised and in view of the well settled decision in law, learned counsel for the respective parties are agreeable to the extent that the trial court would have jurisdiction to entertain the application for amendment. Consequently the order impugned in Civil Revision Application No.1411/96 is quashed and set aside and the case is remanded back to the trial court for deciding the amendment application on merits.

2. Thus, Civil Revision Application No.1411/96 is accordingly allowed and rule is made absolute with no order as to costs.

3. The consequence of the aforesaid order is to be examined in its impact upon the Civil Revision Application No.1247/96. This revision arises from proceedings in execution application filed by the original plaintiff, wherein the present petitioner defendant no.4 had made an application for stay of the execution of the proceedings, pending the decision on the amendment application in the main suit. This application for stay of further proceedings in execution application was rejected by the executing court. As a consequence of the order passed in the cognate revision, this revision is required to be allowed, and further proceedings in the pending execution application shall remain stayed until the trial court decides the amendment application filed by the original defendant on merits. This revision is accordingly allowed and rule is made absolute with no order as to costs.

4. The trial court has further directed to hear and dispose of the amendment application as expeditiously as possible and preferably before 31st March 2000.

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